

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

LAURIE TARDIFF, individually and on
behalf of others similarly situated,

Plaintiffs

v.

Civil No. 02-251-P-C

KNOX COUNTY, DANIEL DAVEY, in his
individual capacity and in his official capacity
as Knox County Sheriff,

Defendants

Gene Carter, Senior District Judge

**ORDER DENYING PLAINTIFFS' MOTION FOR JUDICIAL
DETERMINATION OF THE NUMBER OF PEOPLE IN THE CLASS**

Before the Court for determination is Plaintiff's Motion for Judicial Determination of the Number of People in the Class (Docket Item No. 298). Defendants have responded thereto (Docket Item No. 310). After full review of the written submissions of the parties and consideration of the issues properly generated by the Motion, the said Motion is hereby **DENIED**, the Court **FINDING** that:

- 1) There is no colorable legal basis for the Court to act favorably on the Motion on the basis of Plaintiffs' assertion, which is disputed by the Defendants, that Defendants failed to keep sufficient records to allow the determination of the identity of the members of the Class, and Plaintiffs do not cite any precedent or authorities for that proposition;
- 2) There is a genuine dispute of material fact as to whether Defendants did, in fact, keep the records they were required to keep;

- 3) There is a genuine dispute of material fact as to the accuracy and reliability of such records as it may be shown Defendants did, in fact, keep, if any; and
- 4) There is no legal basis to shift the burden of proof to establish class membership from Plaintiff to Defendant (as the burden to establish exclusion from the class). The cases relied upon by Plaintiffs in seeking that relief are clearly distinguishable on the facts, unpersuasive, or fail to decide the precise issue here presented.

/s/Gene Carter
GENE CARTER
Senior U.S. District Court Judge

Dated at Portland, Maine this 18th day of September, 2006.

Plaintiff

LAURIE TARDIFF

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Defendant

DANIEL DAVEY

*In His Individual Capacity, and in
his Official Capacity as Sheriff of
Knox County*

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Defendant

JANE DOE

In Her Individual Capacity
TERMINATED: 04/19/2006

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Defendant

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TERMINATED: 04/19/2006

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